



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 5939286

Date: JAN. 14, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a special education teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

¹ The Director did not make a finding regarding the Petitioner's claimed eligibility as a member of the professions holding an advanced degree.

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Petitioner received a Master of Education degree in special education from [REDACTED] University in December 2010. Accordingly, she qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, we find the Petitioner has not demonstrated eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

At the time of filing, the Petitioner was working as an "Exceptional Student Services Inclusion Teacher" at [REDACTED] School in [REDACTED] Arizona. She provided a "Job Summary" for this position which states: "The successful candidate with possess a broad knowledge of special education and be able to manage a 25-40 student caseload. The position entails writing and implementing Individual Education Plans, facilitating Multidisciplinary Team Meetings and working in the classroom individually, co-teaching, and/or in a resource setting."⁵

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to continue her work as a special education coordinator at [REDACTED] School. She asserted that her proposed endeavor stands to improve "the educational and social economic value of her students which is of substantial merit and of national importance." In addition, the Petitioner stated:

The student demographics the Petitioner coordinates and teaches at [REDACTED] School positively affects and decreases the nation's cost of law enforcement, unemployment aid or job training. . . . [REDACTED] School has students with autism, learning disabilities, delinquencies, juvenile records, [and] Title I designated children. . . . Most students at [REDACTED] School are working jobs to support themselves, such as janitors, cafeteria workers, etc.

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

The record includes articles about special education teacher shortages in the United States and Arizona, the adverse effects of teacher turnover on student achievement, and the benefits of retaining teachers already employed by a school district. In addition, the Petitioner provided information about poverty and high school dropouts, lost tax revenue attributable to high school dropouts, causes and costs associated with the high school dropout rate, economic ripple effects of high school dropouts, and increased dropout rates for students with learning and attention issues. The record therefore shows that the Petitioner's proposed endeavor aimed at teaching students with special needs has substantial merit.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's work satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. In the present matter, the Petitioner's evidence is insufficient to show that her proposed work has broader implications for her field, as opposed to being limited to the students at the school where she intends to teach. While the Petitioner offered articles indicating that both the United States and Arizona face a shortage of special education teachers, this reported shortage does not render the work of an individual teacher nationally important under the *Dhanasar* framework.⁶ In general, the value of qualified teachers to U.S. national educational initiatives is collective, and the Petitioner has not shown that her proposed work stands to have wider implications in the field of special education.

Furthermore, while the Petitioner asserted that her proposed work as a special education coordinator will contribute to a strong and stable U.S. economy by decreasing the number of high school dropouts, she has not demonstrated that her undertaking has any implications beyond her particular school's dropout rate. Nor has the Petitioner shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from her teaching activities at [REDACTED] School would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner's documentation is not sufficient to demonstrate that her proposed endeavor is of national importance. While we acknowledge the merits of her work to create a positive learning environment and improve her students' academic proficiency and employability, the record does not demonstrate that the Petitioner's instructional and case management activities offer benefits that

⁶ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

extend beyond her school to impact the field of special education or U.S. economy more broadly.⁷ Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁷ In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.